IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

ANGELO MACK	§	
v.	§	CIVIL ACTION NO. 6:05cv188
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Angelo Mack, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of prison disciplinary action taken against him. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Mack says that he was charged with the offense of sexual misconduct, for which he was found guilty on January 11, 2005. He raised 16 grounds for relief in his petition.

The Magistrate Judge ordered the Respondent to answer the petition. The Respondent filed an answer and copies of the state records, including a copy of the hearing in which Mack was found guilty. Mack did not file a response to the answer, bur did file a motion for partial summary judgment, which the Magistrate Judge properly construed as incorporating a response to the answer.

The Magistrate Judge reviewed the records and the hearing tape and issued a Report on October 24, 2005, recommending that the petition be dismissed. The Magistrate Judge reviewed each of Mack's grounds for relief and concluded that he had failed to state a valid basis for habeas corpus relief.

1

The Respondent filed objections to the Magistrate Judge's Report on November 7, 2005. These objections noted agreement with the Magistrate Judge's conclusion, but objected to an alleged failure to address whether Mack's claims that the charges were false, that the charging officer testified falsely, that the witness statements were falsified, and that the reasons relied on for the decision were not adequately set out were unexhausted or procedurally defaulted. In fact, the Magistrate Judge observed in a footnote that Mack's grievances sufficiently gave notice of his claims that the charges against him were false and that Adams, the charging officer, had testified falsely. Report, p. 6, n.2. To the extent that Mack's claims regarding falsification of the witness statements or the adequacy of the reasons for the decision were not exhausted, the Magistrate Judge did not err in addressing these claims on their merits, of which there were none. *See* 28 U.S.C. 2254(b)(2) (allowing dismissal on the merits of unexhausted claims). The Respondent's objections fail to show that the Magistrate Judge was in error.

Mack filed objections to the Magistrate Judge's Report on December 1, 2005. These objections essentially reiterate Mack's grounds for relief which were presented in the original petition, with the addition of citation of authorities such as United States v. Booker, 125 S.Ct. 738 (2005) and Blakely v. Washington, 124 S.Ct. 2531 (2004), which have no bearing whatever on the issues in this case. A careful review of Mack's objections fails to reveal any merit therein.
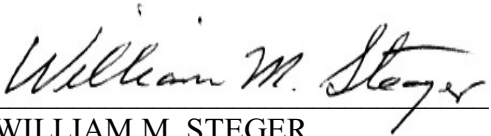
The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the Report of the Magistrate Judge, the objections thereto of the Petitioner and the Respondent, and all pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the parties are without merit. It is accordingly

ORDERED that the parties' objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 16th day of December, 2005.

_____
WILLIAM M. STEGER
UNITED STATES DISTRICT JUDGE